



HIGH COURT CONTESTS

COMPETITION, CONTROVERSY AND CASH IN PENNSYLVANIA & WISCONSIN

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NATIONAL INSTITUTE ON MONEY IN STATE
POLITICS

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OVERVIEW

FUND RAISING FOR THE 2007 AND 2008 JUDICIAL ELECTIONS IN PENNSYLVANIA AND WISCONSIN fell in line with the national trend of increasingly expensive judicial races. Highly competitive and contentious contests in both states resulted in significantly more spending than in previous elections.

In addition, an examination of the gender and racial makeup of the courts revealed that gender representation is nearly balanced in both states, but the lack of racial and ethnic diversity underscores the conclusions in a recent report¹ that in most states judges are white males. In fact, according to the report, in a majority of states the ethnic and gender diversity of that state's population is not represented in their courts.

Two of the seven justices currently serving on Pennsylvania's Supreme Court are women. None of the justices are members of an ethnic minority. The seven-member Wisconsin Supreme Court includes four female justices. As in Pennsylvania, none of the Wisconsin high court justices are members of an ethnic minority.

The two intermediate appellate courts in Pennsylvania seat 24 judges - half are female. Of the 24 judges, only one, is African-American, a female. Wisconsin's 16-member appellate court has 6 women judges. Only one judge, a male, is African-American.

Neither the Pennsylvania nor the Wisconsin high court justices are members of an ethnic minority

A look at fund raising efforts and fund raising's correlation to the gender and ethnicity of Supreme Court and appellate court candidates in Pennsylvania and Wisconsin revealed noticeable differences along racial lines. Examination of the role of gender produced mixed results.

In both states, fund raising by candidates who are members of a racial or ethnic minority was dramatically overshadowed by other candidates. The only ethnic group represented was African-American, five of whom ran in Pennsylvania and one in Wisconsin.

In Pennsylvania, money raised by the two African-American high court candidates and three African-American appellate court candidates accounted for just 7 percent of the total raised. Only one of the appellate court candidate mounted a successful campaign.

Wisconsin's first and only African-American justice lost his seat on the Wisconsin Supreme Court, despite the fact that he raised nearly one-fifth of the money raised by all other Wisconsin high court candidates in 2007 and 2008.

¹ Ciara Torres-Spelliscy, Monique Chase, Emma Greenman, "Improving Judicial Diversity," *Brennan Center for Justice at New York University School of Law*, 2008, available from http://www.brennancenter.org/content/resource/diversity_report/, accessed March 27, 2009.

On average, female candidates outraised the men: the nine female judicial candidates in Pennsylvania raised more, on average, than their 15 male counterparts; in Wisconsin the five female candidates outraised the seven men nearly 3-to-1 on average.

In general, the amount of money raised in High Court Races surpassed previous elections by huge margins.

- In 2007, eight Pennsylvania Supreme Court candidates raised nearly \$9.5 million. On average, Pennsylvania's high court candidates raised \$1.2 million, more than double the \$474,000 average raised in 2005.
- Two of the eight Supreme Court candidates in Pennsylvania were women, both of whom surpassed the \$1 million average raised by the six male high court candidates.
- Three male candidates lost primary elections in Pennsylvania high court races. Two were the only African-Americans running in judicial races in the state, but both lost the Democratic primary. They raised an average of \$247,045.
- In Wisconsin, the five Supreme Court candidates, combined, garnered nearly \$4 million during the 2007 and 2008 elections. By comparison, during the 2005 and 2006 elections, incumbent justices who faced no opposition raised insignificant amounts.
- In 2007, of the three Wisconsin Supreme Court candidates, two were women, one of whom went on to win the election.

In 2007, on average, Pennsylvania's high court candidates raised \$1.2 million, more than double the \$474,000 average raised in 2005

The National Institute on Money in State Politics also examined the money raised by appellate court candidates in Wisconsin and Pennsylvania. The analysis found that:

- A mere \$200 was raised in the 2007 Wisconsin for three appellate court seats by one of the three candidates – all of whom were male. All three candidates ran unopposed.
- In 2008 the picture changed dramatically in Wisconsin, when four candidates (three female and one male) who sought another three seats, attracted \$645,307.
- In Pennsylvania, appellate races cost nearly \$4 million in 2007: \$3.8 million raised by 10 candidates vying for three seats; \$211,245 raised by six judges seeking retention.
- Seven of the 16 appellate court candidates in Pennsylvania were women, who collected 62 percent of the total raised by appellate court candidates.

METHODOLOGY

The Institute reviewed judicial candidate fund raising along the lines of gender and ethnicity for the 2007 election in Pennsylvania and the 2007 and 2008 elections in Wisconsin.

Gender identifications were made by searching state high-court Web sites, candidates' own campaign Web sites, and news reports. To establish racial and ethnic identities, the Institute relied on "The Directory of Minority Judges of the United States, 4th Edition," state court Web sites; candidate Web sites and news articles.

The judicial selection and election process can be especially perplexing. The method of selection and the type of election (partisan, nonpartisan or retention) varies from state to state and in some cases from court to court in a particular state.

Pennsylvania holds judicial elections in every odd-numbered year. Supreme Court candidates compete in partisan primary elections, from which the winners move on to the general election, where the top two vote-getters are declared the winners. Pennsylvania has two intermediate appellate courts: the commonwealth court and the superior court.

Wisconsin holds annual judicial elections every April. The Wisconsin appellate court is known as the Wisconsin Court of Appeals.

THE RACE FOR PENNSYLVANIA'S STATE SUPREME COURT

In 2007, Supreme Court candidates raised nearly \$9.5 million: \$8.8 million raised by seven candidates vying for two open seats vacated by retiring justices, and \$627,564 raised by Justice Thomas G. Saylor to retain his seat on the bench.

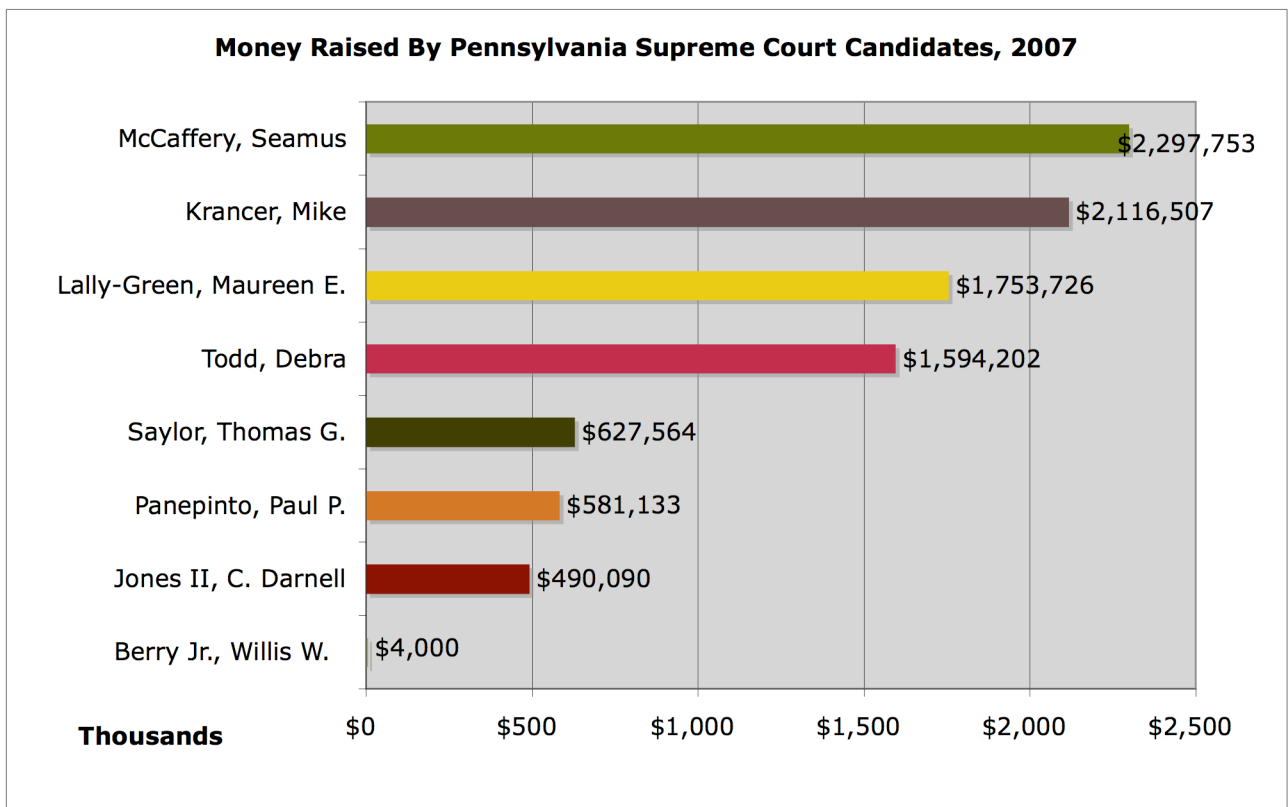
The top two vote-getters were two superior court judges running for Supreme Court seats: Seamus McCaffery raised nearly \$2.3 million, Debra Todd raised \$1.6 million. Judge Todd was victorious despite raising less than the two candidates who lost in the general. In a close third-place finish was another superior court judge, Maureen E. Lally-Green. Judge Lally-Green raised \$1.75 million. Pennsylvania environmental hearing judge Mike Krancer finished a distant fourth. He raised \$2.1 million, the second highest amount raised by the four general election candidates.

MONEY RAISED BY PENNSYLVANIA SUPREME COURT CANDIDATES, 2007

SUPREME COURT CANDIDATE	PARTY	ELECTION OUTCOME	TOTAL RAISED	GENERAL ELECTION VOTES	GENDER
McCaffery, Seamus	Democrat	Won General	\$2,297,753	1,233,265	Male
Todd, Debra	Democrat	Won General	\$1,594,202	1,084,550	Female
Lally-Green, Maureen E.	Republican	Lost General	\$1,753,726	994,760	Female
Krancer, Mike	Republican	Lost General	\$2,116,507	783,635	Male
Saylor, Thomas G.	Republican	Won Retention	\$627,564	1,184,546**	Male
Panepinto, Paul P.	Republican	Lost Primary	\$581,133	N/A	Male
Jones II, C. Darnell *	Democrat	Lost Primary	\$490,090	N/A	Male
Berry Jr., Willis W. *	Democrat	Lost Primary	\$4,000	N/A	Male
TOTAL			\$9,464,975		

* African-American candidate

** Votes cast against his retention = 586,330



RACIAL AND GENDER DIVERSITY

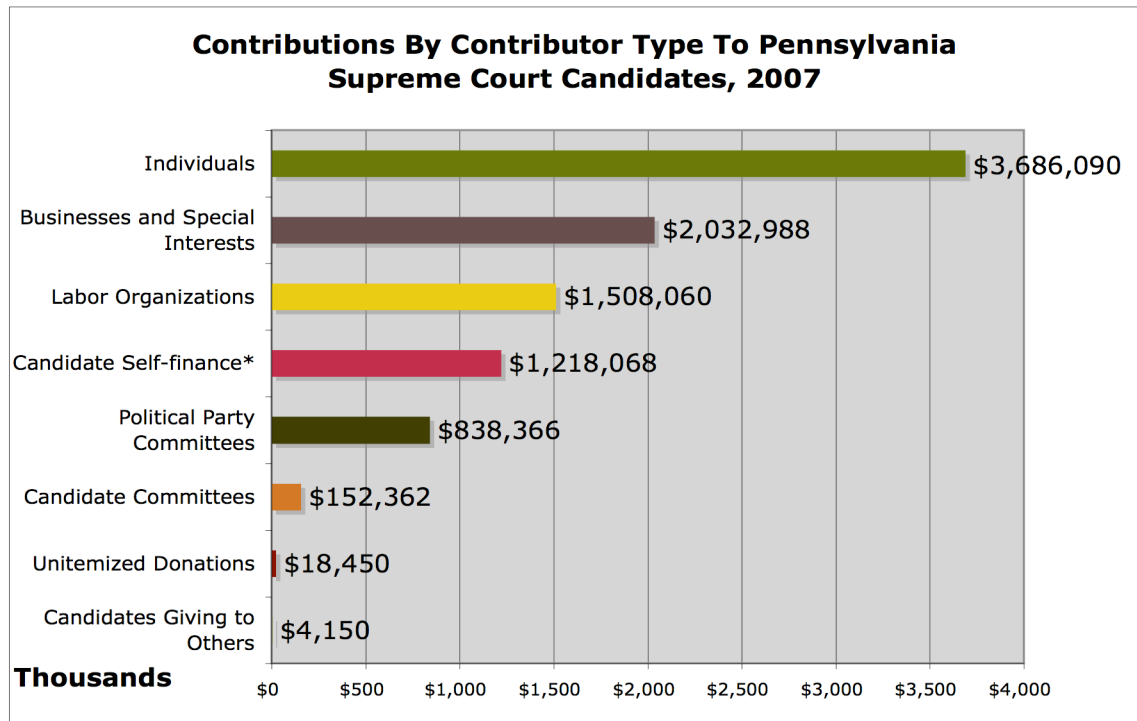
Two of the seven Supreme Court candidates in 2007 were African-American; both raised less than the other five candidates and were soundly defeated in the Democratic primary. The two, C. Darnell Jones II and Willis W. Berry, Jr., raised \$490,090 and \$4,000 respectively during their unsuccessful primary campaigns.

Two of the seven candidates were women who received enough votes to be placed on the general election ballot, producing an evenly divided general election gender make-up. Despite the fact that both female candidates raised less than either of the men, Debra Todd won one of the two seats.

SOURCES OF FUNDS

Contributions from individuals accounted for 39 percent of the nearly \$9.5 million raised by Supreme Court candidates in 2007. Attorneys made up the largest share (more than \$1.3 million) of the money given by individuals.

Two individual donors gave substantial contributions. Ronald Krancer, the largest individual donor, gave \$650,000 to his son's (Mike Krancer) campaign. John M. Templeton, Jr. of the conservative John Templeton Foundation split \$209,500 among three Supreme Court candidates: \$90,000 to Krancer; \$84,500 to Maureen Lally-Green; and \$35,000 to Thomas Saylor's retention campaign.



*Includes contributions from candidates' spouses

Law firms accounted for 77 percent of the \$2 million given by businesses and special interests, favoring the two women candidates by giving them \$724,050 compared to the \$432,250 given to the two men.

Labor unions gave a total of \$1.5 million to the candidates, the bulk (\$1.15 million) going to Seamus McCafferty.

Supreme Court candidates and their spouses helped to finance their own campaigns by giving \$1.1 million. Topping that list were Mike Krancer and Debra Todd. Krancer gave his unsuccessful campaign \$217,500 and his wife, Barbara, gave an additional \$405,000. Debra Todd gave \$31,350 of her own money, and an additional \$437,000 was attributed to her husband Stephan.

C. Darnell Jones, II and Willis W. Berry, Jr., the only two African-American candidates, raised just \$490,090 and \$4,000 respectively during their unsuccessful primary campaigns. The bulk of Jones' money (\$288,745) came from law firms and individual attorneys. Labor unions provided \$64,000; Penn. Gov. Rendell's campaign gave \$44,255.

Thomas Saylor, an incumbent justice seeking retention, raised \$627,564. Nearly half (\$295,750) came from lawyers and law firms.

THE RACE FOR WISCONSIN'S STATE SUPREME COURT

Wisconsin high court candidates, engaged in highly competitive elections, raised record amounts of cash in both 2007 and 2008. In 2007 in Wisconsin, the average amount raised was \$893,387. The average raised in 2008 was \$596,624. No money was raised for the low-profile Wisconsin Supreme Court race in 2006 where one incumbent justice ran unopposed. In 2005 an incumbent justice raised \$1,330 in an uncontested re-election bid.

In 2007 – during the state's most expensive judicial race ever – two women and one man vied for one open seat. Combined, the three candidates raised nearly \$2.7 million, \$2.6 million of which was raised by the two female candidates who went on to compete in the general election.

In 2008 – during another unprecedented election – an incumbent justice was ousted. This marked only the fifth time that a sitting high court judge was defeated since the court was established in 1852. Louis B. Butler Jr., the state's first and only African-American justice, was defeated in what was described as an ugly battle overshadowed by third-party money.²

In addition to the \$1.2 million raised by the candidates themselves, third party groups spent \$3.1 million on the race, mostly on television ads attacking one candidate or the other.³

MONEY RAISED BY WISCONSIN SUPREME COURT CANDIDATES, 2007-2008

ELECTION YEAR	CANDIDATE	OUTCOME OF ELECTION	TOTAL
2007	Ziegler, Annette M.	Won General	\$1,431,802
2007	Clifford, Linda M.	Lost General	\$1,205,830
2007	Sommers, Joseph	Lost Primary	\$42,528
2007 TOTAL			2,680,160
2008	Butler Jr., Louis B.	Lost General	\$752,597*
2008	Gableman, Mike	Won General	\$443,839
2008 TOTAL			\$1,196,436

*Includes \$353,793 Justice Butler raised in 2007 when not up for election.

² Patrick Marley and Stacy Forster, "Gableman Victorious, Challenger Beats Butler In High Court Race; 1st Such Ouster Since '67," *Journal Sentinel*, April 2, 2008, available from <http://www.jsonline.com/news/wisconsin/29406414.html>, accessed Feb. 4, 2009.

³ Scott Bauer, "Report Shows Special Interests Dominated Wis. Supreme Court Race," *Associated Press*, April 9, 2008, available from <http://www.lacrossetribune.com/articles/2008/04/10/wi/05wi.txt>, accessed Feb. 4, 2009.

In the April 2007 race for the one open seat on Wisconsin's high court, then-circuit court judge Annette K. Ziegler emerged victorious after an expensive and nasty election.⁴

Ziegler raised \$1.4 million for her campaign, 19 percent more than the \$1.2 million raised by her general-election opponent, attorney Linda M. Clifford. A third candidate, Joseph Sommers, raised \$42,528 and was defeated during the February primary election.⁵

All together, the two general-election candidates raised \$2.6 million in 2007, double the \$1.3 million raised in the previous most-costly judicial race, which took place in 1999 when two candidates vied for one seat.

Both Ziegler and Clifford were significant donors to their own campaigns. Ziegler contributed \$832,746, or 58 percent of her campaign's funds. That amount included \$9,750 from her husband, J.J. Ziegler, a real estate developer. Clifford gave \$548,000 or 40 percent of her campaign's total - \$9,649 of which was attributed to her husband, attorney Keith Clifford.⁶

Ziegler raised an additional \$144,344 from retirees and civil servants; Clifford raised \$134,222 from these same sources. Lawyers and law firms gave Ziegler \$42,296 and gave Clifford \$225,721.

Ziegler and Clifford raised \$2.6 million in 2007, double the \$1.3 million raised in 1999—the previous most-costly judicial race

Ziegler received \$10,000 each from 13 individuals. She also collected \$8,625 each from Koch Industries, Wisconsin Builders Association, and Wisconsin Realtors Association. Clifford received \$535,743 from individual contributions, with three individuals giving her campaign \$10,000 each.

The 2008 Supreme Court campaign between incumbent Justice Louis Butler and his challenger, Judge Mike Gableman, attracted nearly \$1.2 million in direct contributions. This was the second-most expensive Supreme Court race in the state. It was also the second year in a row that the race was dominated by money spent by special interest groups.⁷

Justice Louis B. Butler, Jr. was appointed to the court in 2004. He faced the electorate for the first time in 2008. Butler raised \$752,600 in direct contributions (\$353,793 in 2007 when he was not up for re-election and \$398,804 in 2008), more than his challenger, Mike Gableman, who raised \$440,651.

⁴ "Warring Ads in Wisconsin Supreme Court Race," *FactCheck.org*, March 20, 2007, available from http://www.factcheck.org/judicial-campaigns/warring_ads_in_wisconsin_supreme_court_race.html, accessed May 15, 2008.

⁵ The top two vote-getters in the non-partisan primary election advance to the general election.

⁶ Bill Lueder, "Annette Ziegler and Linda Gordon," *The Daily Page*, Mar. 8, 2007, available from <http://www.thedailypage.com/isthmus/article.php?article=5885>, accessed April 9, 2009.

⁷ Buying Time—2008: Wisconsin Analysis," *Brennan Center For Justice*, May 12, 2008, available from http://www.brennancenter.org/content/resource/buying_time_2008_wisconsin, accessed March 4, 2009.

The Wisconsin Republican Party weighed in with \$30,390 to Gableman's nonpartisan race. Gableman also benefited from support from pro-business groups, including Wisconsin Club for Growth (\$8,500), Wisconsin Builders Association (\$8,500), and Concerned Business and Industry PAC for the Wisconsin Manufacturers and Commerce (\$8,100). In addition, 11 individuals gave Gableman \$10,000 each.

Justice Butler's biggest support came from labor unions, which gave him \$39,125 in 2007 and \$45,725 in 2008. He received \$10,000 from Milwaukee philanthropist Lynde B. Uihlein, and \$9,500 from Brookfield, Wisc., attorney William M. Cannon.

SOURCES OF FUNDS

Contributions from individuals accounted for nearly half of the funds raised by Wisconsin high court candidates in 2007, but in 2008 that increased to 85 cents of every dollar raised. Most of the money from individuals came from two broad sources: retirees and lawyers.

In 2007, 46 percent of the money came from the candidates and their spouses. In 2008, only less than one percent came from self-financing candidates.

TYPE OF CONTRIBUTORS TO WISCONSIN SUPREME COURT CANDIDATES, 2007-2008

CONTRIBUTOR TYPE	2007	2008	TOTAL
Individuals	\$1,428,706	\$717,390	\$2,146,096
Candidate Self-finance *	\$1,380,839	\$1,675	\$1,382,514
Labor Organizations	\$126,000	\$45,725	\$171,725
Businesses and Special Interests	\$58,122	\$44,016	\$102,138
Party Committees	\$1,175	\$31,340	\$32,515
Unitemized Donations	\$15,864	\$25	\$15,889
Candidate Committees	\$12,298	\$600	\$12,898
Candidates Giving to Others	\$10,948	\$1,900	\$12,848
TOTAL	\$3,033,952	\$842,671	\$3,876,623

* Includes donations from candidates' spouses.

PENNSYLVANIA APPELLATE COURT RACES

Pennsylvania has two intermediate appellate courts: the commonwealth court and the superior court. The intermediate appellate court races in 2007 attracted nearly \$4 million, with all of the money going to 13 superior court candidates, while the three candidates seeking retention on the state's Commonwealth Court raised no money.

Most of the \$4 million (\$3.8 million) was raised by 10 candidates vying for the three open seats on the superior court. Another three races were judges seeking retention on that court. They raised \$211,245.

Six men and four women ran for the three open superior court seats in the primary election. The successful primary election candidates were evenly represented along gender and racial lines: three women and three men, one African-American male and one African-American female.

There was a significant difference in the outcome and money raised when looking at the gender of the 10 candidates, but the results are mixed when looking at ethnicity.

The three female candidates in the general election outraised and defeated the three male candidates. The women raised nearly \$2.2 million, double the \$1.1 million raised by the three men.

The three female candidates in the general election outraised and defeated the three male candidates

Cheryl Lynn Allen, the successful female candidate and the only African-American judge on the superior court, raised \$130,557 – just 6 percent of the \$2.2 million attributed to the three female candidates. On the other hand, the African-American male candidate, John Milton Younge, raised \$290,834 – one-fourth of the \$1.1 million raised by the three male candidates.

Men didn't fare much better in the primaries. Three of the four candidates who lost the primary were men. The lone female primary loser, Anne Lazarus, raised \$212,439, slightly less than the \$240,290 raised by all three men combined.

James M. DeLeon, the only African-American male to lose the primary, raised \$75,390 – 31 percent of the money raised by the men who lost the primary.

**MONEY RAISED BY PENNSYLVANIA
APPELLATE COURT CANDIDATES, 2007**

CANDIDATE	GENDER	PARTY	COURT	ELECTION OUTCOME	TOTAL
Shogan, Jacqueline O.	Female	Republican	Superior	Won	\$1,377,233
Donohue, Christine	Female	Democrat	Superior	Won	\$655,496
Folino, Ron	Male	Democrat	Superior	Lost general	\$577,266
Younge, John Milton *	Male	Democrat	Superior	Lost general	\$290,834
Bratton, Bruce F.	Male	Republican	Superior	Lost general	\$281,355
Lazarus, Anne E.	Female	Democrat	Superior	Lost primary	\$212,439
Allen, Cheryl Lynn *	Female	Republican	Superior	Won	\$130,557
Lynn, Jimmy	Male	Democrat	Superior	Lost primary	\$127,750
DeLeon, James M. *	Male	Democrat	Superior	Lost primary	\$75,390
McCormick, Timothy J.	Male	Democrat	Superior	Lost primary	\$37,150
TOTAL					\$3,765,470
Stevens, Correale F.	Male	Nonpartisan	Superior	Retained	\$121,570
Melvin, Joan Orie	Female	Nonpartisan	Superior	Retained	\$89,330
Musmanno, John L.	Male	Nonpartisan	Superior	Retained	\$345
TOTAL					\$211,245
Leadbetter, Bonnie B.	Female	Nonpartisan	Commonwealth	Retained	\$0
McGinley, Bernard L.	Male	Nonpartisan	Commonwealth	Retained	\$0
Smith-Ribner, Doris A.*	Female	Nonpartisan	Commonwealth	Retained	\$0
TOTAL					\$0
OVERALL TOTAL					\$3,976,715

* African-American

RACIAL AND GENDER DIVERSITY

Of the \$4 million raised by superior court candidates in Pennsylvania, 12.5 percent went to African-American candidates. When examining the giving by contributor type, African-American candidates received less in every category, with the exception of organized labor and individual candidates giving to others.

Contributions to African-American candidates from organized labor accounted for 61 percent of labors' total of \$218,650. On the other hand, businesses and special interest groups gave African-American candidates \$98,423, or 19 percent of their total \$519,312 . Political party committees gave African-American candidates 7 percent of their total \$171,419.

SOURCES OF FUNDS

One-third of the \$3.8 million raised by candidates running for the three open seats came from the candidates and their spouses. Jacqueline Shogan received \$1.1 million from her husband, accounting for 80 percent of the money she raised. Christine Donohue gave her campaign \$80,000, or 12 percent of her campaign funds.

Individual donors gave a total of \$1.6 million, or 40 percent of the money raised for the open seats. The four female candidates raised \$809,626 from individuals; the six men raised \$750,282.

Businesses and special interests did not appear to favor either gender, giving an average of \$47,000 to male and female candidates. Labor unions, however, favored men, giving the average male candidate \$31,142, roughly six times the average \$5,300 given to female candidates.

Law and lobby firms, along with individual attorneys, gave \$1.1 million, which accounted for 28 percent of the money given in the open seat campaigns.

Three incumbent judges (two men and one woman) seeking retention on the state's superior court raised \$211,245 in 2007. Law and lobby firms, along with individual attorneys, gave \$88,200, or 42 percent of the funds raised.

One-third of the \$3.8 million raised by candidates running for the three open seats came from the candidates and their spouses

WISCONSIN APPELLATE COURT RACES

In 2007, only one of the three appellate court candidates raised money: then circuit judge Edward Brunner, who ran unopposed for the open seat and collected just \$200. The two incumbents, both of whom ran unopposed, did not raise any money.

In 2008, the contest between a female incumbent and her male challenger attracted \$641,259 in contributions. Challenger William Gleisner raised nearly \$243,000 in his unsuccessful campaign to oust incumbent judge Lisa Neubauer, who raised \$398,552.

Incumbent Judge Burneatta Bridge was re-elected in 2008. She raised \$4,047.

**MONEY RAISED BY WISCONSIN
COURT OF APPEALS CANDIDATES, 2007 AND 2008**

CANDIDATE	ELECTION CYCLE	ELECTION OUTCOME	TOTAL
Brunner, Edward R.	2007	Won	\$200
Anderson, Daniel P. *	2007	Won	\$0
Lundsten, Paul *	2007	Won	\$0
2007 Total			\$200
Neubauer, Lisa S. *	2008	Won	\$398,552
Gleisner, William	2008	Lost	\$242,707
Bridge, Burneatta L. *	2008	Won	\$4,047
Curley, Patricia S. *	2008	Won	\$0
2008 Total			\$645,307
OVERALL TOTAL			\$645,507

* Incumbent

RACIAL AND GENDER DIVERSITY

During the 2007 election, three men ran for and were elected to three open appellate seats. In 2008, two women and two men vied for three seats. Both women were incumbent judges, only one of whom faced a challenge. None of the seven candidates over the two-year period were members of a racial or ethnic minority.

SOURCES OF FUNDS

Individuals, including the candidates and their spouses, contributed 98 cents of every dollar raised in the 2008 District 2 appellate court race. Sixty percent of the money raised came from the candidates themselves. Gleisner gave his campaign \$179,649, which accounted for three-quarters of the money he raised. Neubauer gave her campaign \$200,000 – half the funds she raised.

Other individuals provided an additional \$243,452 , or 39 percent of the money raised. Lawyers and lobbyists gave \$150,288.

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